Public Summary: Canadian Security Intelligence Service (CSIS) *in camera, ex parte* Hearing

Background

An *in camera, ex parte* hearing was held for the examination of witnesses from the Canadian Security Intelligence Service (CSIS or the "Service") and the Integrated Terrorism Assessment Center (ITAC). This hearing was held the absence of the public and the Parties pursuant to an order made by the Commissioner in response to a request by the Government of Canada. The Government of Canada had advised the Commission that the evidence that Commission counsel intended to elicit from the witnesses would include information the disclosure of which would be injurious to national security.[1]

This summary describes the evidence in a manner that does not disclose injurious information as defined under section 38 of the *Canada Evidence Act*. In certain places where the evidence given in this session is already set out in the Unclassified Institutional Report and Unclassified Witness Summary of CSIS and ITAC, it is not repeated here.

Preliminary Matters

The Commissioner presided over an *in camera, ex parte* hearing. The witnesses were Mr. David Vigneault, Ms. Michelle Tessier, and Ms. Marie-Hélène Chayer, and were examined in a panel format. Documents that were referred to during the hearing are cited in the footnotes below. A list of exhibits is also set out in **Appendix A.**

Examinations were conducted by Mr. Gordon Cameron and Ms. Nusra Khan on behalf of the Commission and by Mr. Robert MacKinnon on behalf of the Government of Canada. Questions about this summary should be directed to Ms. Khan.

Both the Classified and Unclassified versions of the CSIS/ITAC Institutional Report were adopted as evidence by Mr. Vigneault,[2] and all three witnesses confirmed the accuracy of the Classified and Unclassified versions of the CSIS/ITAC Panel Interview Summary.[3]

[1] Public Order Emergency Commission, Ruling on a Request for an *in camera, ex parte* Hearing, October 26, 2022.

[2] DOJ.IR.00000001 (Unclassified Institutional Report).

[3] WTS00000060 (Unclassified Witness Summary).

Examination by Commission Counsel

Mandate

Each witness described their organizational mandate and their roles and responsibilities. [This information is set out in the Unclassified Institutional Report and will be repeated during the public appearance of these witnesses.]

The National Terrorism Threat Level (NTTL)

Ms. Chayer explained that CSIS sets the national terrorism threat level on the recommendation of ITAC.

Mr. Vigneault explained that ITAC's role is to conduct an independent analysis of the information that is available to CSIS and other intelligence partners, and to recommend the NTTL to the Director of CSIS on the basis of this information. The Director then decides whether to accept the analysis and the recommendation for the threat level. The purpose of this to create a "double key" environment to protect against the real or perceived risk of the politicization of the terrorism threat level [that might arise if the intelligence agency that conducts operations also determines the national threat level.]

Distinction between national security investigations conducted by CSIS vs the RCMP

The panel was asked to explain the difference between the collection of intelligence for the purpose of a national security investigation conducted by CSIS, versus a criminal national security investigation for example, terrorism investigations conducted by the RCMP.

Ms. Tessier explained that the Service and the RCMP operate under separate legal mandates and have distinct thresholds. As defined in the *CSIS Act* (the Act), in order for the Service to begin an investigation i.e. target an individual, the Service has to determine that there are reasonable grounds to suspect that the activity represents a threat to the security of Canada, as defined in s. 2 of the Act: espionage, foreign influenced activity, terrorism, or subversion. Conversely, law enforcement requires "reasonable grounds to believe" to arrest someone or to charge them with an offence.

Ms. Tessier explained that if the Service comes across evidence of criminality in the course of its investigations, it will normally share this information with the relevant law enforcement agency.

Mr. Vigneault explained that there are challenges associated with CSIS sharing intelligence with the law enforcement partners when it may be used as evidence in a criminal prosecution, particularly when the intelligence at issue comes from a sensitive source. When the public nature of the prosecution could impair investigative efforts directed at protecting Canada's national security, a decision needs to be made as to whether protecting national security and the confidentiality of the sensitive information at issue is more important than its use in the prosecution of a criminal offence.

Targeting Authorities

Ms. Tessier explained that CSIS may receive information on topics, movements, or individuals however CSIS will only open an investigation when it has reasonable grounds to suspect threat-related activity.

Ms. Tessier explained that there are two targeting levels used by the Service, which are distinguished by the level of intrusiveness of the investigative tools the Service can use. At the first level, less intrusive investigative techniques are used; at the second level, more intrusive techniques—often requiring a court-issued warrant—will be used.

Ideologically Motivated Violent Extremism (IMVE)

Mr. Vigneault and Ms. Tessier explained the Service's investigation of IMVE. [This topic is also covered in the Unclassified Witness Summary.]

Mr. Vigneault used the image of a funnel, with the wide range of extreme views at the top of the funnel and the narrow scope of IMVE activity that might be investigated by the Service at the bottom. The top end of the funnel captures online rhetoric that can be racist, misogynistic, and disturbing, but is nonetheless lawful. This is the zone where individuals can build conspiracy theories and shared narratives through social media platforms, which allows users to search for content and uses algorithms to redirect users to such content. This phenomenon is referred to as "amplification," and can lead to the process of radicalization. The middle zone of the funnel captures actions or content could fall under the *Criminal Code* definition of hate speech, and which might engage police intervention. The very narrow end of the funnel is the online content that might engage the Service's mandate. These are the individuals who are taking their ideological beliefs and saying, "We need to do something about it. We will organize ourselves. We'll start to do training. We'll start to come up with plans to commit acts of terrorism. We'll talk about acquiring weapons."

If the online rhetoric reaches the point where it is directed to or threatens serious violence for an ideological, religious, or political objective, the Service may determine there are reasonable grounds to suspect threat-related activity and initiate investigative or operational activities. Ms. Tessier and Mr. Vigneault also explained that even if the investigative threshold is met, the decision as to whether to investigate activities will include consideration of the Service resources available and the Service's priorities at the time.

The three witnesses explained that the COVID-19 pandemic exacerbated xenophobic and anti-authority narratives leading to the rise of conspiracy theories, misinformation, and disinformation online. [This evidence is set out more fully in the Unclassified Witness Summary.]

Ms. Tessier stated there has been a significant increase in Service investigative activity due to the rise of IMVE and the effects of the pandemic.

Ms. Chayer explained that ITAC assesses IMVE threats. ITAC evaluates the likelihood of a terrorism incident through an assessment of intelligence pertaining to the intent, capability, and opportunity of potential threat actors to conduct acts of terrorism.

Mr. Vigneault explained that the Service is generally aware of Diagolon, in the context of online communities espousing a variety of grievances including anti-government and anti-health measures views. Ms. Tessier explained that Diagolon represents more of a network of people connected through shared podcasts, social networking, or common grievances, some of which are extreme.

Mr. Vigneault explained that it is a common trend in the IMVE space when an analogy or movie reference becomes an idea that people can congregate around, and that becomes a unifying factor for more extreme ideologies.

Ms. Tessier explained that unlike RMVE, IMVE groups often do not have a command and control structure or organized membership.

Mr. Vigneault further explained that ideologues or influencers associated with extremist networks are not necessarily the individuals who will engage in extremist activity, but they have the ability to influence others to action. This adds to the complexity of the IMVE environment.

Ms. Chayer stated that a further complication is that what triggers an individual to conduct an act of terrorism is different for everybody, so the triggers to violence are typically based on an individual's specific beliefs or personal grievances.

Ms. Tessier advised that under s. 2(c) of the Act, CSIS can investigate both individuals who incite serious violence and those who might demonstrate a willingness to conduct acts of serious violence themselves when their actions are directed towards an ideological, political or religious objective.

Ms. Tessier and Mr. Vigneault described that, during the convoy, the Service's focus was on their subjects of investigation, and that their subjects' involvement in the Convoy was only a part of their activities under investigation. Their activities in relation to the Convoy helped the Service to understand what the Convoy itself was. The Service's assessment is a dynamic assessment, and they continued to look at their SOIs to see to what extent they could engage in violent activities against public officials, health officials and so on because of their rhetoric.

The Service described to government officials and elected leaders the Service's views on the threat to national security created by the Convoy. The focus was on how the Convoy and the related protests might be exploited by IMVE persons or groups. The Service might view an existing subject of investigation who is participating in the Convoy to continue to meet the Service's investigative threshold without concluding that the Convoy itself is a threat.

Intelligence Gathering Pertaining to the Convoy

In response to a question about whether CSIS had intelligence indicating that protestors planned to react violently if attempts were made to arrest them, Mr. Vigneault explained that CSIS is precluded from investigating lawful protest, and was focused on whether there were specific activities that would meet the CSIS threshold for investigation. CSIS did not assess whether protestors would react violently from a public law and order perspective, which is a matter for law enforcement.

Intelligence Assessments Pertaining to the Convoy

When asked whether CSIS would conclude there existed a threat to the security of Canada because the protest had become too big, or uncontrollable, Mr. Vigneault explained as follows. CSIS is very much guided by the very specific nature of the Act. If the information they're receiving from the police as well as their own information, is that the essentially an environment is created where CSIS thinks think that people, a small group of people or individuals, would then meet the threshold that they would engage in that violence described at 2(c), of course, CSIS would be investigating that very seriously.

Mr. Vigneault further explained that the line between the public order analysis of " analyses we cannot control this anymore," versus the analysis of whether CSIS thinks there are some individuals who now want to engage in terrorist activity" can sometimes be blurred or sometimes be very clear. That is why the Service engages in ongoing discussions with law enforcement for an ongoing, dynamic assessment. Throughout the protests in late January and early February, CSIS was engaged in daily discussions within CSIS and with partners to assess the situation. The fact that the protest is out of control and can't be controlled, is not an issue that falls under the CSIS Act.

Mr. Vigneault stated that the CSIS is assessing threats to national security from the narrow perspective of the CSIS Act. Nonetheless, the Service engaged in various information-sharing tables to ensure that information was appropriately shared with the police of jurisdiction.

Information Regarding Threats to the Security of Canada

When asked, Ms. Tessier agreed that the Service had a comprehensive degree of input from law enforcement agencies for the purpose of maintaining awareness of the convoy. Ms. Tessier stated that the Service participated in the Combined Intelligence Group, in INTERSECT, and engaged its own meetings with the RCMP.

Ms. Tessier confirmed that the Assistant Director, Requirements attended the daily ADM NS OPS meetings on behalf of the Service as did Ms. Chayer on behalf of ITAC.

Ms. Tessier also confirmed that if the Communications Security Establishment had information pertinent to the mandate, this information would have been shared with CSIS.

Mr. Vigneault explained that the advice and the assessments they would be giving to government, is taken in conjunction by the decision maker with all of the other different

pieces of analysis, for the decision maker to make a determination in the end if this a threat to national security or not. When CSIS looks at national security, in this case, their assessment was that this was not a threat to national security, within the confines of the *CSIS Act.*

Mr. Vigneault further explained that for the purpose of defining "national security," the legislator took the CSIS definition and put it into the *Emergencies Act*. But how CSIS interprets activity under section 2(c) is within the confines, interpretation, jurisprudence of the *CSIS Act*. When asked if the broader concept of 'national security' such as economic harm or environmental harm, even public health harm, and the pandemic, are something CSIS considers, Mr. Vigneault explained that CSIS is aware of these concepts as part of the broader discussions but when it comes time to do their operational work, they look at it very much within the confines of the *CSIS Act*.

Ms. Chayer confirmed that, before, during and after the Convoy, the National Terrorism Threat Level (NTTL) remained at "medium." Ms. Chayer explained that ITAC employs a detailed methodology that refers to five levels, very low, low, medium, high, and critical. She further explained that the NTTL fluctuated within the "medium" range throughout the Convoy.

Intelligence about Coutts Arrests

Ms. Tessier stated that the arrests at Coutts did not lead the Service at that time to the conclusion that the protests necessarily constituted a threat to the security of Canada as defined in the *CSIS Act*.

Project Hendon Reports

Mr. Vigneault advised that CSIS representatives at the Combined Intelligence Group, and CSIS representatives at INSET were directly receiving Project Hendon information during the Convoy. This information, which was distributed by the OPP was therefore coming directly to CSIS.

Advice to Cabinet

Mr. Vigneault explained that both he or Ms. Tessier attended both the meetings of Cabinet [on February 13 and 15] and the meetings of the IRG. Mr. Vigneault stated that their participation at the IRGs was mostly verbal, to provide updates. Mr. Vigneault recalled that, when the possibility of invoking the *Emergencies Act* was first raised at these discussions, he asked the Service's Intelligence Assessment Branch to prepare an intelligence assessment of how the threat environment would be affected by the invocation of the Act. He recalled that this assessment was first discussed at the February 12 IRG, and later provided as a paper document at the February 13 IRG. At that meeting, the Prime Minister asked for that document to be shared with the late evening Cabinet meeting [on February 13].

Mr. Vigneault confirmed a statement from the Commission's interview with CSIS and ITAC to the effect that at no point did the Service assess that the protests in Ottawa or

elsewhere (the "Freedom Convoy") constituted a threat to the security of Canada under section 2 of the *CSIS Act*, and that CSIS cannot investigate activity constituting lawful protest unless conducted in conjunction with a threat-related activity. Mr. Vigneault confirmed that, to the extent that he was able to give input on this topic at Cabinet and IRG meetings, this was the view that he expressed.

When asked, Mr. Vigneault stated that he was not aware what the statement, "A more detailed threat assessment is being provided under separate cover," at page 2 of document SSM.NSC.CAN.00003224 referred to. He further explained that he had not previously seen this document, which is ordinarily the case with memoranda prepared for the Prime Minister.

Mr. Vigneault explained that, aside from providing information to partner agencies and to the IRG on the evolution of the dynamic of the activities, CSIS was not asked specifically their opinion about the revocation. But CSIS' views on the evolution of the dynamic of the activities, were shared with government and were part of the information that they had at their disposal to make the decision.

Involvement of Former Military Members in the Convoy

When asked, Ms. Tessier stated that CSIS was aware of the presence of ex-military members at the protest in Ottawa.

Examination by Counsel for the Government of Canada

Limitations on Social Media Collection

Mr. Vigneault explained that CSIS only looks at social media where the collection or investigation is done for the purpose of understanding threats to the security of Canada. Mr. Vigneault further explained that there is a gap in the legal mandates and operational capabilities of Government of Canada agencies for social media monitoring in relation to large scale events that became apparent during the Convoy, and during the fall 2021 election. Mr. Vigneault stated that while this gap is present, the Service is not looking to expand its mandate to monitor social media, saying "in a democratic country, it's probably not a good idea to have your intelligence service being the one looking at the social media, including overwhelmingly law-abiding citizens". Mr. Vigneault gave the example of the GiveSendGo data leak as information that fell outside of the Service's mandate. [This evidence is set out more fully in the Unclassified Witness Summary.]

Threat Assessment Concerning the Invoking the *Emergencies Act*

Mr. Vigneault stated that the Service's assessment was that there was a risk that the invocation of the Act would trigger a reaction in some IMVE actors. CSIS was concerned that invocation would be, potentially, a factor that would further radicalize individuals.

Ms. Tessier explained that there was an initial increase in online rhetoric after the invocation, but, because it was announced at the same time as public health measures being lowered, the increase petered out.

Increase in Threats Against Public Officials

The panel were referred to several CSIS and ITAC assessments between 2020 to the period the convoy ended, describing threats to journalists and politicians. The panel agreed that since 2020, there has been an increase in IMVE online rhetoric and threats to authority figures, including law enforcement, public and elected officials. Ms. Chayer explained that this rhetoric was mostly targeted towards politicians, including against provincial officials and the Prime Minister. Ms. Chayer further explained that the use of violent and graphic images, such as a noose or the use of direct threats are extremely violent but do not necessarily convey an intention to act. When asked, Ms. Chayer clarified that ITAC assesses intent pertaining to the conduct of an act of terrorism – not to any kind of serious violence. Other acts of serious violence, such as homicide, do not fall under the ITAC mandate.

Advice to Cabinet

Mr. Vigneault stated that at the end of the February 13 IRG meeting, following the discussion of the *Emergencies Act*, he was asked by the Prime Minister to provide an opinion as to whether he supported the invocation of the Emergency Act. Mr. Vigneault explained that based on both his understanding that the *Emergencies Act* definition of threat to the security of Canada was broader than the *CSIS* Act, as well as based on his

opinion of everything he had seen to that point, he advised the Prime Minister of his belief that it was indeed required to invoke the Act.

Comment by Chief Sloly

Mr. Vigneault stated that he saw references in the media to a comment from former Chief Sloly that he believed that CSIS and intelligence agencies were too focused on Islamic terrorism. Mr. Vigneault explained that the Service devotes approximately half of its resources to IMVE.

Examination by Commissioner Rouleau

Reforms Sought

When asked, Mr. Vigneault explained that one critical area for reform was modernization of the definition of a threat to the security of Canada in s. 2 of the Act. Ms. Tessier agreed and added that in today's environment we really need to be looking at the definition of threats to the security of Canada; it's more threats to Canada's national interests. Updating the definition to match the expanding expectations from government for more information from the intelligence service, for example relating to economic security, research security and pandemic and health intelligence, because the definition in terms of threat currently can be quite narrow. Ms. Tessier added that additional reforms to the warrant regime under the *CSIS Act* are required. [This evidence is set out more fully in the Unclassified Witness Summary.]

Mr. Vigneault stated there needs to be a renewed discussion about which data tools CSIS should have access to. He gave the example of the use of big data analysis by partner agencies as one area for improvement.

Both Ms. Tessier and Mr. Vigneault acknowledge that there are important limitations around the collection and use of information by a national security agency but emphasized the need for legislative and policy reforms to the *CSIS Act,* particularly given the complexities associated with IMVE.

Lawful Protest

Mr. Vigneault explained that the Service cannot investigate protests or lawful dissent unless it is carried out in conjunction with threat-related activities as set out under section 2 of the CSIS Act. Even if a protest were deemed unlawful, for example by the police of jurisdiction, CSIS would not be able to investigate without the existence of reasonable grounds to suspect threat-related activity.

Information from the PPS

Mr. Vigneault confirmed that information from the PPS was received through the RCMP at the Combined Intelligence Group.

CSIS Threat Assessments

Ms. Tessier explained that the Service's determination that the convoy and related protests did not constitute a threat to the security of Canada was not made by a singular analyst or executive. Rather, strategic analysts provided multiple assessments throughout the relevant period, which were approved at higher levels before they were disseminated. Mr. Vigneault explained that the assessment process is not a binary one, but an ongoing, dynamic consideration of whether the information collected was rising to the level of a threat to national security.

Appendix A: Exhibits

TS.CAN.001.00000001	Understanding IMVE Threats to the Fabric of Society
TS.CAN.001.00000002	IMVE: Assessing Potential CSIS Act 2c Threats
TS.NSC.CAN.001.00000148	An Increase in Ideologically Driven Violent Online Rhetoric Targeting the PM
TS.NSC.CAN.001.00000172	Possible Implications of *Emergencies Act* Across the IMVE Space
TS.NSC.CAN.001.00000174	Analytical Brief [Redacted]
TS.NSC.CAN.002.00000224	Executive Daily Brief, 2022 01 27
TS.NSC.CAN.002.00000225	Executive Daily Brief, 2022 03 03
TS.NSC.CAN.002.00000226	IMVE Threat Implications of Freedom Convoy
TS.NSC.CAN.001.00000166	Freedom Convoy: The Imagery and Significance of Flags
TS.NSC.CAN.001.00000156	Possibility of IMVE-Driven Opportunistic Violence on the Margins of Truck Convoy Protest
TS.NSC.CAN.001.00000159	Freedom Convoy 2022
TS.NSC.CAN.001.00000182	Diagolon Participation in the Freedom Convoy 2022 and Beyond
TS.NSC.CAN.001.00000211	Anti-Public Health Measures Movement, Grievances, and the Freedom Convoy 2022
SSM.NSC.CAN.00003224	Decision Note: Invoking the *Emergencies Act*
Classified	CSIS Classified Institutional Report
Classified	CSIS Classified Witness Summary